

### Remarks

Claim 1 is pending in this application. Dependent claims 2 through 10 have been added to more clearly define the invention. No new matter has been added as a result of the above amendments.

### Objection to Drawings

Applicant submits herewith a formal set of drawings including corrected figure 4b with appropriate heading.

### Rejection of claim 1 is rejected under 35 USC 102(e)

Claim 1 is rejected under 35 USC 102(e) as being anticipated by Heinzeroth (US 6,516,750). Applicant respectfully disagrees.

The Examiner states that Heinzeroth discloses a bird feeder, comprising: a base; one or more feeding chambers, wherein one end of said chambers are securely affixed to said base; a top locking device, wherein an end of said chambers opposite to said base are securely disposed within said top locking device; and a guard that is disposed along a surface of said top locking device, wherein said guard has one or more guard units, wherein units in apposition are securely adjoined to one another, and wherein said guard extends over a feeding chamber so as to prevent a squirrel from accessing said feeding chamber.

Section 102 of Title 35 provides the novelty requirements for patentability. In order for a prior art reference to anticipate a claim it must teach each and every element of that claim. M.P.E.P. §2131. The Court of Appeals for the Federal Circuit states: "[a] claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." Verdegaal Bros. v. Union Oil Co. of California, 814 F.2d 628 (CAFC, 1987).

The presently claimed invention provides a squirrel proof bird feeder that comprises a base with one or more feeding chambers affixed to the base. Additionally, the feeder has a guard that is disposed about the surface of a top locking device. This guard comprises a plurality of individual guard units. The guard extends beyond the feeding chambers so as to preclude entry from squirrels. (Claim 1 has been amended so as to more clearly define this point.) The guard does not cover access to the feeding chambers, rather, the guard provides a barrier to climbing atop the feeder. The optional dome is the actual structure that covers the feeding chambers.

The Examiner states that Heinzeroth discloses a "guard ..., wherein [guard] units in apposition are securely adjoined to one another, and wherein said guard extends over a feeder chamber so as to prevent said squirrel from accessing said feeding chamber." This is not analogous to what is presently claimed.

Heinzeroth discloses a bird feeder having multiple "nest modules" wherein each module has a discrete roof (73). There is no structure similar to the guard as claimed in the present invention. The roof (73) in '750 is somewhat analogous to the dome of the present invention. However, the guard of the presently claimed invention does not cover the feeding chambers, rather it provides an external barrier that surrounds the outer circumference of the feeder thus preventing squirrels access to the top of the feeder. In fact, the diameter of the guard is greater than that defined by the chambers of the feeder. There is no analogous structure to the guard disclosed in '750.

Clearly, the "each and every element" rule articulated above has not been satisfied and therefore, the references cited by the Examiner fails to defeat novelty for the presently claimed invention. Therefore, Applicant respectfully requests reconsideration and withdrawal of the present rejection.

In conclusion, in view of the above amendments and remarks, Applicant respectfully requests the Examiner find the pending claim allowable and issue a Notice of Allowance.

Although no fees are required, please charge any underpayment of fees to or credit any overpayment of fees to Deposit Account No. 03-2410.

The Examiner is invited to call the undersigned attorney at (617) 854-4237 should he determine that a telephonic interview would expedite prosecution of this case.

Respectfully submitted,



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